

UNAPPROVED MINUTES  
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	January 7, 2003
Time of Meeting:	6:30 p.m. (Closed Session) 7:30 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

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**ROLL CALL**

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:36 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

**CLOSED SESSION**

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following two items listed on the agenda:

1. **CONFERENCE WITH LABOR NEGOTIATOR**  
(Pursuant to Government Code Section 54957.6)  
Agency Negotiator: Art Hartinger  
Employee Organizations: MEA
2. **CONFERENCE WITH LABOR NEGOTIATOR**  
(Pursuant to Government Code Section 54957.6)  
Agency Negotiator: Steve Mattas  
Unrepresented Employee: City Manager

Mayor Esteves adjourned the meeting to closed session at 6:37 p.m.

The City Council meeting reconvened at 7:36 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION  
ANNOUNCEMENTS**

There were no closed session announcements.

**PLEDGE**

Members of Troop 92 led the Council and audience in the Pledge of Allegiance.

**MINUTES**

MOTION to approve the City Council minutes of December 17, 2002, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Dixon, Polanski.

Ayes: 5

**SCHEDULE**

Vice Mayor Dixon reported on January 8, 2003, there would be a special orientation for the Santa Clara County Emergency Preparedness Council; on January 9, 2003, there would be a 6:00 p.m. Valley Transportation Authority Board meeting where she would officially be sworn in to represent Milpitas; the Chamber Board of Directors meeting was now scheduled for January 16, 2003, at 11:30 a.m.; and the January 16, 2003, 8:30 a.m. City/School joint meeting had been postponed to the month of February due to the resignation of Dr. Marlin Foxworth.

MOTION to approve the Schedule of Meetings as amended.

M/S: Livengood, Dixon.

Ayes: 5

**VII.  
PRESENTATIONS**

There was no one present from the Wildlife Center of Silicon Valley.

Robert Burrill, Milpitas High School photography teacher, congratulated the Council for having such a wonderful building. Mr. Burrill said when he came across the photo he was about to present done by a colleague, he knew where it should go. Mr. Burrill unveiled a large framed photograph of the Twin Towers taken by Stephen Johnson and presented it to the Council. Matthew Grilli, Student Body Representative, on behalf of Milpitas High School students, read the following statement: "Let us always remember that our new Milpitas City Hall is a monumental structure symbolizing our 'World Trade' within the United States of America and to a republic for which it stands, one nation under God, indivisible, with Liberty and justice for all. 'We will never forget!'" Mr. Burrill said he hoped the Council would hang the photograph in an appropriate place in the lobby at City Hall. Mayor Esteves accepted the photograph on behalf of the Council, thanked Mr. Burrill for the wonderful photograph, and asked that staff look for an appropriate location to display the photograph.

Mayor Esteves read a commendation commending Minh Tri-Vu on his achievement of reaching the rank of "Eagle Scout," congratulated Minh's mother who was present in the audience, and presented the commendation to Mr. Tri-Vu.

Mayor Esteves read a proclamation commending George Washburn for being recognized by the Santa Clara County Office of Emergency Services as Volunteer of the Year. Mayor Esteves also recognized George's wife, Gloria Washburn, who was present in the audience explaining she had served on the Community Advisory Commission for many years.

#### **CITIZENS FORUM**

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Julie Cherry, 2312 Lacey Drive, representing the Milpitas Alliance for the Arts, read an article from the Milpitas Post this week entitled "Milpitas Full of Artitude – Year 2002 in Review"; announced that the Alliance had received a grant in the amount of \$3,000 from CitiBank to help pay for the next "art-in-the-park"; and the the Alliance, through the culmination of a 5-year grant that was funded by the Lila Wallace Reader's Digest fund and the Lucille and David Packard Foundation, administered through Community Foundation Silicon Valley, had received a \$50,000 check to help implement the next three years of its plan to enhance the art community in Milpitas.

Art Swanson, 311 Carnegie Drive, shared his thoughts for world peace by urging people to not purchase products made in China.

David Richerson, 1920 Yosemite Drive, urged that in the negotiations for a new cable television franchise, the City press for everybody in Milpitas who has cable to have free access to Channel 15. Mr. Richerson said he thought Channel 15 should serve the entire community without having to pay because there was no cost to AT&T.

Rob Means, 1421 Yellowstone, said he thought the City could save \$300,000 on the Yosemite/Curtis pedestrian over-crossing project, and the VTA could also save money on ten other barrier-crossing projects in Santa Clara County, by using people-mover technology and asked the Council for \$2,500 to support Cities 21 in building a full-scale model of a PRT.

Jesse Caulkins, said he was disturbed earlier in the day when he brought a handicapped person in a wheel chair to City Hall and found he could not park in the underground parking garage and instead had to park in the lot and get out in the rain. Mr. Caulkins further stated he thought there should be a covered place at City Hall where a car may pull in to drop off a handicapped person.

#### **ANNOUNCEMENTS**

Vice Mayor Dixon thanked the Department coordinators for the 2003 Charitable Drive that raised \$42,578; the contractor (Pacific Water Arts, Inc.) that built the fountain in front of City Hall and the waterfall in the back had provided the City with its 2003 calendar highlighting

Milpitas on two of the months (May and December); and reported the VTA was currently considering the deletion of certain bus routes and suggested checking the VTA web site to follow-up on the actions being taken. Vice Mayor Dixon informed the Council and audience that Debbie DeSmidt, Frank DeSmidt's wife, passed away Friday, January 3, 2003, to complications of Pancreatic Cancer, and requested the Council honor Debbie and Frank by adjourning in her memory. Mayor Esteves said he would be pleased to honor the request.

Councilmember Polanski reported she had attended the joint Fire Academy graduation ceremony held on December 19, 2002, it was the first graduation she had attended, she found it very enjoyable, and thanked staff for an excellent job.

Mayor Esteves reported he had participated in the openings of the Well Spring Community Church and Ying Yung Bakery and welcomed them to Milpitas; congratulated and thanked the volunteers for planting trees at Hillcrest Park; and thanked the Sunnyhills Neighborhood Association for sponsoring the morning breakfast.

Mayor Esteves, referencing citizens' comments on agenda items, reminded the audience that members of the audience wishing to address the Council regarding an item that was on the agenda, including public hearing items, must first be recognized, come to the podium and state their name and City of residents for the Clerk's record, and limit remarks to two minutes, including any visual or technology assisted presentations. Mayor Esteves asked that members of the audience refrain from making comments unless they are recognized.

## AGENDA

City Manager Wilson requested item 3 be placed on the consent agenda. Councilmember Livengood said he had some questions on the item and would prefer it be left off consent.

MOTION to approve the agenda as submitted.

M/S: Dixon, Polanski.

Ayes: 5

## CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar.

City Manager Wilson, referring to item 7, stated that in the resolution and in the agenda language, the word "temporary" should be changed to "permanent" in all places.

Councilmember Polanski requested items 7 and 10 be removed for discussion. Vice Mayor Dixon said she also wished item 7 be removed for discussion.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of items 7 and 10, in accordance with the staff recommendations.

M/S: Livengood, Dixon.

Ayes: 5

## \*2. Commission Appointments

Approved the Mayor's appointments and re-appointments to commissions as follows:

### Community Advisory Commission

- Re-appoint Phil Cook and Marie Pham to new four-year terms expiring January 2007;
- Appoint Joselito Abelardo to the vacancy created by the election of Althea Polanski to the Council for a four-year term expiring January 2007;
- Move Charles King to the Alternate No. 1 position for a term expiring January 2005;
- Move Syed Mohsin to the Alternate No. 2 position for a term expiring January 2005;
- Move Craig Ranker to the Alternate No. 3 position for a term expiring January 2004;
- Appoint Chris Lee to the Alternate No. 4 position for a term expiring January 2004.

### Library Advisory Commission

- Appoint Marilyn Hay to the vacancy created by the election of Armando Gomez to the Council for a term expiring June 2004;
- Appoint Yu-Lan Chou to the Alternate 2 position for a term expiring June 2003.

Telecommunications Commission

- Re-appoint Albert Alcorn, Ravi Gopal Rao, Paul Peterson, and Gunawan Alisantosa to new two-year terms expiring January 2005.

- \*4.  
Wal-Mart Grant
- Accepted \$500.00 Wal-Mart Foundation Grant and increased FY02-03 budget appropriation for Trees and Landscape Maintenance by the same amount.
- \*6.  
Disadvantaged Business Enterprise (DBE)
- Adopted Resolution No. 7259 approving revised Disadvantaged Business Enterprise (DBE) program goal for the 2002/2003 fiscal year.
- \*8.  
South Bay Water Recycling Program (Project No. 6093)
- Authorized the City Engineer to execute change orders in the amount of \$424,270.11 to Preston Pipelines.
- \*9.  
Hillside Water System Improvement Project (Project No. 7083)
- Approved plans and specifications and authorized advertising for bid proposals for construction.
- \*11.  
2002 Election Costs
- Approved payment request in the amount of \$12,416 (\$7,944 from the City Clerk's election budget and \$4,472 from the candidates' deposits holding account).
- \*12.  
Miscellaneous Vendors
- Approved the following purchase requests:
1. \$6,000.00 to Olympic Mailing Services for printing, folding and post office delivery of 15,000 copies of the chloramine conversion outreach brochure for the utility engineering function. (Funds are available from the engineering division budget for this service.)
  2. \$9,468.03 to Target Specialty Products for the purchase of tree pesticides for annual winter tree spraying for the landscape maintenance function. (Funds are available from the public works department operating budget for this purchase.)
  3. \$5,700.00 to Jafco Canine Management for the purchase and street training of a new canine for the Police Department. (Funds are available from the police department operating budget for this purchase.)
  4. \$7,500.00 to Tammy Quirn for eight weeks of specialized explosive detection training for a new police canine for the Police Department. (Funds are available from the police department operating budget for this service.)
  5. \$198,194.00 to Santa Clara County Controller-Treasurer Department for the City's share of annual costs for booking and processing of arrested persons per the current agreement with the county. (Funds are available from the non-departmental operating budget for this service.)
  6. \$6,744.81 to Yellowfish Promotions for the purchase of recycle content promotional items for the City's recycling program for the solid waste function. (Funds are available from the engineering division operating budget for this purchase.)
  7. \$13,000.00 to Valley Transportation Authority (VTA) for the purchase of the annual employee Eco Passes for the City's trip reduction incentive program for the transportation planning function. (Funds are available from the planning, recreation and neighborhood services department operating budget for this service.)

8. \$7,492.47 to A.C. CONTROLS for emergency repairs of Abbott Pump Station control panel for the Utility Maintenance Division. (Funds are available from the public works department operating budget for this service.)

\*13.  
Payroll Registers

Approved payroll register for the periods ending November 30, 2002, in the amount of \$1,590,071.17, and December 14, 2002, in the amount of 1,593,941.

#### **PUBLIC HEARINGS (NONE)**

#### **JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

##### **RA1. CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:11 p.m.

##### **RA2. ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

##### **RA3. MINUTES**

MOTION to approve the Redevelopment Agency minutes of December 17, 2002, including joint meeting with the City Council, as submitted.

M/S: Dixon, Polanski.

Ayes: 5

##### **RA4. AGENDA**

MOTION to approve the agenda and consent calendar as submitted.

M/S: Dixon, Livengood.

Ayes: 5

##### **RA5. CIVIC CENTER UPDATE**

Redevelopment Projects Manager Armendariz reported there were two items for the Council's consideration; the first was a PowerPoint presentation of the project; the second item was to approve the awarding of a contract for security services. Mr. Armendariz, referring to the contract close outs, stated to date there were 35 construction contracts completed, there were 8 remaining contractors who had yet to complete their punch list work; staff anticipated 5 contractors would be completing their punch list work by the January 21, 2003, Council meeting; there would be two additional contractors completing their punch list work by the February 4, 2003, Council meeting; the last contractor, Royal Glass, was not anticipated to complete its work until March 18, 2003. Mr. Armendariz noted there were no change orders being presented; however, staff anticipated three or four last remaining change orders would be presented at the next Council meeting. Mr. Armendariz further stated the City Hall total budget of \$38.5 million, minus expenses and commitments to date of \$38.1 million, left a remaining contingency of \$313,878; the change orders that would be brought to the Council at the meeting of January 21, 2003, were estimated at between \$60-75,000.

Vice Mayor Dixon inquired if the \$313,878 included the unspent, earned interest. Mr. Armendariz stated it did.

Special Projects Engineer Mark Rogge reported a Request for Proposals had been advertised and sent to security firms in the area; four proposals had been received and evaluated by the Public Works maintenance staff and the Police Department; and California Land Management (CLM) had been the highest ranked firm. Mr. Rogge described some of the services that would be provided that included contacting visitors and directing them, showing there was a security presence, and advising and requesting appropriate behavior in a positive way while keeping an eye on potential risks. Mr. Rogge gave examples of services the existing security had provided, stating that the services ranged from helpful to potentially hazardous situations.

Councilmember Livengood commented that this was a somewhat scaled back contract than what the Council last saw and inquired if all the proposals received included the costs those firms were going to charge and where was this proposal on the cost scale. Mr. Rogge responded the proposals were pretty much in the same cost range; differences included hour variances to the recommended RFP schedule; and the CLM proposal was probably on the

higher side. Councilmember Livengood inquired what the hourly rate was. Mr. Rogge responded approximately \$22.00 an hour. Councilmember Livengood said he thought that was high with respect to the industry standard and in his experience at the Great Mall where he bid security contracts; he was glad to see the number of hours cut back but still thought this was overkill at \$100,000 per year; he thought it was too much money; City Hall was on the site for many years along with the Community Center and the Library; and he knew they provided a service but it came with a cost.

Vice Mayor Dixon expressed appreciation to staff for the scaling back of the security service hours; pointed out that the service under consideration was certified in cardio pulmonary resuscitation as well as having its personnel registered and licensed with the State of California as security guards; and they were also certified in First Aid through the American Red Cross. Vice Mayor Dixon, addressing the cost, said the three buildings were now connected, there was a new plaza park enjoyed on a daily basis, she expected the use to increase in the summer months, and any damage to the building would cost dearly. Vice Mayor Dixon also stated that she had received inquiries from residents asking why there isn't the same security at the Sports Center, and she was in support of the contract.

Councilmember Gomez said he also had some concerns about the cost and \$44,000 was a lot of money; however, we do have a \$38 million new building that was attractive to those who want to do bad things. Councilmember Gomez inquired if staff would be periodically coming back to the Council reviewing the hours, performance, and informing the Council on how it was working. Mr. Rogge responded staff's goal was to keep the Council informed as to how things were working out and continue to make recommendations.

Councilmember Livengood inquired what the breakout of the \$22/hour was for the guards and the company. Eric Mart, President of CLM, stated the guard's salary ranged from \$10.95 to \$13-\$14 an hour. Councilmember Livengood stated although he felt the overhead costs were high, he had been impressed with the guards he had seen thus far and thought CLM hired employees who were very helpful and professional looking.

Mayor Esteves, addressing the security guard contract, inquired if something happened (i.e., property damage or person accident), what was CLM's portion of liability. Mr. Mart said the company did not have a direct liability, it did have the requirement to be vigilant in reporting the activities going on.

Mayor Esteves inquired what the cost would be if police personnel were used. Mr. Rogge responded maintenance personnel would be more than double the cost and police personnel would be 4-5 times the cost. Mr. Rogge informed the Council that during the construction process, other agencies had been used; however, there were various problems encountered that caused the termination of their services. Police Chief Charles Lawson said the cost for a police officer would probably be in the area of \$50/hour without benefits.

Councilmember Polanski inquired as to the criteria staff used for the selection process. Mr. Rogge responded one of the things was experience dealing with the general public, the ability to communicate with the public, and willingness and flexibility to flex hours in the future.

David Richerson, said he was pleased with CLM's work since City Hall opened and felt it was head and shoulders above what he had seen at the Great Mall; however, he felt that the City had the very best security in its Police Department and would rather see the officers looking after the Community Center, City Hall, and Library rather than sitting at Starbucks's.

MOTION to award a contract for security services to California Land Management for an amount not-to-exceed \$44,000, as recommended by staff.

M/S: Dixon, Polanski.

Ayes: 4

Noes: 1 (Livengood)

\*RA6.

Authorized staff to enter into negotiations with the County of Santa Clara to develop an

**OWNER PARTICIPATION  
AGREEMENT**

Owner Participation Agreement (OPA), subject to Agency/Council approval, for the development of County (Elmwood) property.

**RA7.  
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:39 p.m.

The City Council meeting continued.

**REPORTS OF OFFICERS & BOARDS**

1.  
Introduce Ordinance No. 227.3  
Smoking Regulations  
Public Bldg. Entrances

Mayor Esteves reported the Council had received a request to prohibit smoking at entrances to publicly owned buildings; the request specifically related to smoking at the entrance to the library; the proposed ordinance would prohibit smoking at entrances to all City-owned buildings; it was a Health and Safety issue; felt it would help discourage smoking, especially among youngsters; would help remind the public of the hazards of smoking; and hopefully would keep entrances to public buildings cleaner. Mayor Esteves further reported that the proposal would prohibit smoking within 20 feet of any City of Milpitas public-owned building entrances, open windows, or air intake systems.

Councilmember Polanski inquired what the reason was to limit the distance to 20 feet and suggested 100 feet or 50 feet. Mayor Esteves said it was an arbitrary basis but felt 100 feet would be a little restrictive. Councilmember Polanski suggested limiting the distance to 50 feet unless there was a legal reason it couldn't be done.

City Attorney Mattas responded the Council had the discretion to set the distance limitation it deemed appropriate; there was a new law that placed a 25 foot buffer around children's play areas and it would be more consistent, if the Council so desired, to set the limit at 25 feet.

Vice Mayor Dixon inquired if the American Heart and Lung Association had any recommendation. Mr. Mattas said he was not aware of any such recommendation. Vice Mayor Dixon said she could see moving it out a little, and she had received complaints from families who go to the library. Mayor Esteves suggested starting with 25 feet and going from there, which would be consistent with State regulations.

Mayor Esteves invited public comments. There were none.

City Attorney Mattas read the title of Ordinance No. 227.3; changing the distance requirements from 20 feet to 25 feet.

MOTION to waive reading beyond the title.

M/S: Livengood, Polanski.

Ayes: 5

MOTION to introduce Ordinance No. 227.3 amending Chapter 215 of Title V to prohibit smoking at entrances to City-owned buildings.

M/S: Livengood, Dixon.

Ayes: 5

Mayor Esteves thanked Linda Arbaugh for suggesting this.

**UNFINISHED BUSINESS**

3.  
Audio Visual Equipment  
Usage Policy

City Attorney Steve Mattas reported the item before the Council related to Council direction at the December 17, 2002, Council meeting directing staff to return with a revised audio-visual equipment usage policy incorporating four changes to (1) authorize speakers to use City audio-visual equipment during Citizens Forum, (2) to authorize speakers to use private audio-visual equipment, (3) to authorize speakers to make non-verbal presentations, and (4) to authorize the Mayor to direct that audio-visual equipment be turned off when statements that are allegedly defamatory, obscene, or not directly

relevant to the subject matter are made. Mr. Mattas said the changes were included in the policy before the Council this evening.

Councilmember Livengood said he was pleased the first three things presented tonight had turned 180 degrees from the policy presented at the last meeting, this was a much better policy, and he appreciated it; however, he was still worried about the fourth item and had a problem with the terms "defamatory" and "obscene" which were subjective terms. Councilmember Livengood commented that if a speaker made defamatory or obscene remarks, they would be taking that risk on their own; he was concerned that if somebody speaking at the podium was cut off, they could say that their First Amendment rights were being cut off. City Attorney Mattas responded that the policy as written identified certain types of comments that were not permissible; with respect to the determination if something was obscene or defamatory, if the Council was concerned over a comment, the Mayor would ask the question of the City Attorney for an opinion before making a determination; to the extent the comment was borderline, the City Attorney would advise the Council and then the Mayor would have to make the determination as to whether or not that's going forward; as to whether you would create a cause of action, a cause of action would not be enforceable against the City if, in fact, the statement was obscene or defamatory; as the Council was aware, the standard was pretty high when making comments about public officials and a comment would have to be knowingly false or made with a reckless disregard for the truth or falseness of the statement so many comments are received and understood by the public to be critical but are ones that are perfectly appropriate and the Council would be advised; this was an attempt to establish standards that the public is aware of and understands; however, if the Council wished to not have that, it was within the Council's prerogative.

Councilmember Livengood said he couldn't remember a situation where someone made defamatory remarks; he remembered sometimes when a speaker got off the subject; it made him nervous and felt it had a chilling effect; making a determination on the fly whether something was defamatory or not had some potential for a cause for action and trying to curb somebody's First Amendment rights. Councilmember Livengood further stated that if it had occurred in the past, he would be more concerned.

Vice Mayor Dixon commented that when she was on the Planning Commission and someone became unruly or used profanity, they took a break to bring back the decorum; she had no problem with it and could go either way and would go with the majority.

Councilmember Polanski commented that she was not sure this statement was actually needed in the policy; speakers should stay on target on what was on the agenda and the Mayor had discretion to remind the speakers to stay on the subject matter; if someone used profanity, the Mayor should also have the ability to make a statement; she thought it was very difficult for the Council to control this; she hadn't seen any of it over the last 20 years that she had been following Council meetings; she thought the problem was when speakers get off track of what was on the agenda and Mayor has right to ask them to get back on track; and she was comfortable either way.

Councilmember Gomez said that as he expressed the last time this policy was discussed, he would like the term taken out because he felt it was subjective; part of the territory was hearing things you don't want to hear, it came with the job; and felt the references to defamatory and obscene should be taken out but "directly relative to the agenda" should stay.

City Attorney Mattas said as he understood the consensus of the Council, the references to defamatory and obscene could be removed from both section 2 and section 4.

Isaac Hughes said he wanted to remind everyone in the room that the most costly lawsuits that ever happen are Constitutional lawsuits because those are the ones that usually have no case law when they make it that far and they always start in the Federal courts which is the most expensive court to try a case which is where Mr. Mattas would make the most money so notice that every time he proposes something he has the opportunity the way he words it to make either a minimum or maximum amount of money. Mr. Hughes further stated if we have a way where the Council edits people on the fly and gets challenged, the City will pay a few million dollars for him to defend the City.



David Richerson passed out light switches to the Council commenting that he liked to use props and then asked everyone to look to the right and to the left and asked do you trust them to turn the switch off when you are speaking publicly, do you trust anybody, do you trust my judgment to turn you off based on my interpretation that the words you are saying are defamatory or obscene or not directly related to the subject matter; before the Council decided whether or not to subjectively give the power to one or more people, he asked that they turn the switch over and look at it upside down – it says “no” which was how the Council’s decision should be on this matter; it should be no; the liability was right here with the speaker, it was recorded, they can be taken care of later, the meeting was taped and broadcast live, what you say you are liable for and if you cross the line legally, you will be dealt with later through legal channels.

Councilmember Polanski said based on her 19 years of experience on the Milpitas Board of Education and watching Council meetings, there are times when a speaker will get off track of the subject matter and she believed the Council should have the right to ask them to get back on track; this is a public meeting in a public setting to conduct the business of the City and the Council has to have the time and ability to do that; and she agreed with the changes to the policy.

MOTION to accept the staff recommendation but to remove all references to defamatory and obscene but to maintain the directly relevant to the subject matter in sections 2 and 4.

M/S: Dixon, Livengood.

Mayor Esteves asked the motion to be amended to incorporate Mayor “or a majority of the Councilmembers” because he wanted to encourage Councilmembers to speak up.

Councilmember Polanski said she didn’t know how that would work, believed it would be cumbersome, but she was willing to go along with the majority of the Council.

Vice Mayor Dixon said that as the maker of the motion, she was comfortable with the charge going to the Mayor. Councilmember Livengood said he thought there were good checks and balances with what the Mayor was proposing and didn’t have a problem with it. Vice Mayor Dixon, as the maker of the motion, said she would go along with the Mayor’s amendment. Councilmember Livengood, the second to the motion, agreed with the amendment.

Jesse Caulkins said he thought somebody ought to be in charge and say we don’t want that anymore -- that is enough. Mr. Caulkins further stated if the Mayor says “that is enough,” there usually is a Police Office present who should come in and escort them out ; he didn’t think three or four people were needed to make the decision as to who is running the meeting.

VOTE ON MOTION (including the amendment):                      Ayes: 4                      Noes: 1 (Polanski)

## **ORDINANCES**

### **5. Ordinance No. 239.1 Urban Runoff Pollution Violations (Introduce)**

Principal Engineer Darryl Wong reported under the urban runoff permit issued by the San Francisco Regional Water Quality Control Board, the City is responsible for implementing an urban runoff pollution prevention program and before the Council was an ordinance revision to provide improved enforcement of the urban runoff pollution control requirements. Mr. Wong further reported the ordinance provided an administrative citation process whereby staff could issue citations and provided an improved enforcement process.

Councilmember Gomez asked what happened to repeat offenders. Mr. Wong responded under the current process, staff could hold an administrative hearing to require them to come up with an action plan; if they don’t do that, there were several other remedies and cited one case where civil liability was applied.

Councilmember Livengood asked if code enforcement or Fire Department personnel are sent to handle situations where a restaurant may throw water out a back door into the storm drain or food bi-parts are put into the garbage bin that may leak. Mr. Wong responded it had been a cooperative effort and the

Fire Department identified possible urban runoff problems through its inspection services and hazardous materials program. Councilmember Livengood further inquired if this included a situation where somebody was using a hose and rinsing soap or cleaning agent into the storm drain. Mr. Wong responded it included any type of material that causes foaming or fish kill. Councilmember Livengood asked about the car wash on Main Street. Mr. Wong responded that discharge goes into the sanitary sewer and not the storm drain. Councilmember Livengood further inquired if that was also true for apartment complexes that offer areas for tenants to wash their cars. Mr. Wong said that would also apply and staff generally provided an advisory notice when violations were seen.

Vice Mayor Dixon said she thought this was a very good report and inquired if a phone number would be made available. Mr. Wong said there was a non-point number individuals could call and 911 calls were also accepted.

Mayor Esteves inquired when the ordinance would be effective if approved tonight. City Attorney Mattas responded it would be effective 30 days after second reading. Mayor Esteves commented that there would be time to inform everyone about the ordinance. Mr. Wong responded yes. Vice Mayor Dixon inquired if Mr. Wong interacted with the Planning Commission at all. Mr. Wong said this was a city-wide effort and they had been working with all departments, including the Planning Department. Vice Mayor Dixon asked if there was a tracking method by the Planning Commission that might trigger a permit revocation hearing. Mr. Wong responded that he had met with the Planners to coordinate this issue and there was a very intensive effort on the part of the staff. Vice Mayor Dixon commented that the utility bills might be used for notification. Mr. Wong responded that the utility bills had limited space and were currently being used for notice of the solid waste rates.

Isaac Hughes said he thought what the Council was trying to find out from Mr. Wong was by what criteria, either volume or severity of the items that enter a storm drain that might flow to the Bay, and asked Mr. Wong what was the PH for acidity that was actionable by the Fire Department on a scale of 7-12; what would the actionable activity of the DA's office require – how much PH on the acid level? Mr. Wong said he couldn't say right off what the actual level was. Mr. Hughes said that level was 12 when the Fire Department gets active in gathering information for hazardous materials; because Mr. Wong didn't know that, it was why, among many other things, the policy doesn't have teeth. Mr. Hughes referred to a personal thank-you letter he received from the head environmental District Attorney because he was the guy who blew the whistle on a contractor on a property he contract cleaned on when their code enforcement did nothing for months on end, and that was why he received a thank-you letter thanking him for his cooperation.

Principal Engineer Wong read the title of Ordinance No. 239.1 amending Sections 2, 6, 8, 11, repealing Sections 12 through 15, and adding new Sections 12-14 to Chapter 16, Title XI of the Milpitas Municipal Code establishing an administrative citation process for urban runoff pollution violations.

MOTION to waive the reading beyond the title.

M/S: Livengood, Dixon.

Ayes: 5

MOTION to introduce Ordinance No. 239.1.

M/S: Livengood, Polanski.

Ayes: 5

## RESOLUTIONS

### 7. Salary Adjustments Police/Patrol Officer Trainees

City Manager Wilson reported in the review of relationships of the classifications of employment, it was found staff was not bringing to the Council salary adjustments that were occurring based upon historical relationships of the Police Officer Trainee and Patrol Officer Trainee classifications that were in the past brought to the Council for approval; this was a matter of some remediation to try to fix that previous oversight since all salary and financial matters needed to be formally recognized and approved by the Council; the purpose of the resolution was to adjust the salary basis in order to continue the relationships between the various classifications and the attachment reflected the adjustments that would be necessary based on the current contract with the Police Officers Association (POA).

Councilmember Polanski said she understood that these were not temporary employees and asked how many of these trainees there were. Police Chief Charles Lawson responded there currently was one Police Officer trainee in the Academy. Councilmember Polanski inquired if trainees were represented by the POA. Chief Lawson responded they were not. Councilmember Polanski further inquired how trainees differed from reserve officers. Chief Lawson responded they had the same standards, reserves were part-time, worked 20 hours per week, and were not paid. Councilmember Polanski asked how many reserve officers were in the City. Chief Lawson responded currently there were three. Councilmember Polanski asked if information could be provided on a future agenda regarding how the reserve program operated and asked for confirmation that the Council was looking at adjusting the trainee salary by the same salary increase as the POA was receiving. City Manager Wilson responded Councilmember Polanski was correct and this would maintain the relationship with the Patrol Officer and Police Officer positions. Mr. Wilson noted there was a past practice but it was never formalized. Councilmember Polanski said she appreciated the clarification.

MOTION to adopt Resolution No. 7264 granting a general wage increase to the Police Officer Trainee and Patrol Officer Trainee permanent, non-sworn classifications for the period January 2, through June 2005, per Exhibit "A."

M/S: Livengood, Polanski.

Ayes: 5

## **BIDS & CONTRACTS**

### **10. Art in the Park Murphy Park**

City Manager Wilson reported this item was the formal agreement to provide a contractual relationship with Vickie Sowell, the artist who proposed to create the piece to be placed at Murphy Park previously approved by the Council; the contract was reviewed and approved by the City Attorney.

Councilmember Polanski removed this item from the Consent Calendar and commented that she knew the sundial artwork at Augustine Park was well received and that the City was looking at doing other projects throughout the parks; she heard the discussion on the art for this project and while she was aware that art is in the eye of the beholder, it probably was not the art she would have picked or approved. Councilmember Polanski said her question was since the City needed to maintain the art and work with the artist and since the Council was contributing one-third of the cost (\$5,000) and it appeared there would be more in the future, what role did the Council or City play in helping to do outreach to the community surrounding the park to solicit input from the residents as to what would be the most appropriate art for the park. Councilmember Polanski further stated she had heard some complaints from residents who weren't aware of the project, and she wanted to know if the City participated in some of that outreach so that the residents in that area would have a better understanding. City Manager Wilson responded that from the experience with the sundial project, the Milpitas Alliance for the Arts was the primary sponsoring partner, they provided the review and solicited the artists and staff was not directly involved in assisting with the outreach in an organized fashion; staff was the conduit to bring through to the Council the review of the selection made through the Alliance.

Councilmember Polanski suggested placing on the agenda for another meeting or working with the staff of the Alliance and the Arts Commission on a procedure or policy if there were going to be more art-in-the-park projects throughout the City to be sure the residents are being notified. Councilmember Polanski asked that it be brought back for Council discussion on what the City's role would be in assisting. Mayor Esteves agreed with Councilmember Polanski's request and inquired if the City would assume maintenance for the art which was projected to be zero. City Manager Wilson responded in the short term, Mayor Esteves was correct; there were some requirements that it be constructed in a reasonably maintenance free manner but over time and if there was some damage, it would require some maintenance. Mayor Esteves commented that we really don't know what the impact of maintenance will be at this point.

Julie Cherry, Milpitas Alliance for the Arts, clarified that as far as the City's involvement in the decision, they did meet with representatives of the City's maintenance, engineering, and one other department; they looked at all three of the proposals and gave comments on maintenance and liability

and the overwhelming message was that the one chosen by the neighborhood was lowest with respect to maintenance and liability. Ms. Cherry further clarified that for the actual vote, the Milpitas Alliance for the Arts does not vote -- only the residents of the neighborhood vote.

MOTION to authorize the City Manager to enter into an agreement with Milpitas Alliance for the Arts and Vickie Jo Sowell, subject to approval as to form by the City Attorney.

M/S: Livengood, Dixon.

Ayes: 5

#### **ADJOURNMENT**

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:50 p.m. in honor and memory of Deborah DeSmidt, active volunteer and community member, who passed away on January 3, 2003.

Gail Blalock, CMC  
City Clerk